IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1443 OF 2003

Shramik Utkarsha Sabha & Anr.PETITIONERS

Versus

M/s.Forbes Gokak Limited & Anr..Respondents

Mr. C.U.Singh with Ms. M.D'Souza i/b. Sanjay Udeshi & Co.,
for the Petitioner
Mr. J.P. Cama /b.RMG Law Associates for the Respondents.

CORAM: F.I. REBELLO J.
DATE :20th December, 2004

P.C.:

. The petitioners impugned the order dated February 20, 2003 whereby the application for amendment moved by the petitioners herein has been rejected.

2. The petitioners have filed a complaint which is pending before the Industrial Court invoking Item 2 (A) (B) and (3) of Schedule II and Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The complaint was filed on 30th July, 2001. On 20th February, 2003 they moved an application for amendment contending that the respondents are in fact victimising the members of the complainant union by transfers. It was also set out that the President of the complainant Union Mrs.Mary Michael has been illegally and arbitrarily suspended by the respondents by creating false papers and documents against her. It was then set out that Mrs. Mary Michael is being victimised or punished by the respondents because she is the Unit President of the complainant union in

respect of Textile Division of the Respondent No.1 Company. It was also explained that she alone had been singled out and consequently the relief as sought. This application was opposed on behalf of the respondents herein.

3. The learned Industrial Court by its order dated February 20, 2003 held that the application for amendment is belated and as such the application cannot be allowed. It observed that if the proposed amendment changes the nature of the complaint then such amendment cannot be allowed. If the delay caused in filing the amendment is not explained properly then amendment should not be allowed. The learned Industrial Court while dismissing the application for amendment as belated, held that there is no cogent reason given for the delay in filing the application. It also observed that if the amendment is allowed the item of suspension would squarely fall within the jurisdiction of the Labour Court and for this reason also the amendment cannot be allowed and, therefore, dismissed the application for amendment, which is the subject matter of the present petition..

4. It is not necessary to go in depth into the controversy. Suffice it to say that the case of the petitioner was that the amendment was only consequential to the main complaint wherein they have invoked invoked items both under Schedule II Schedule IV. The learned Tribunal has proceeded on the footing that the petitioners herein have only challenged the suspension of Mrs. Mary Michael and as that

has been made after considerable time the amendment ought not to be allowed. The Tribunal has not addressed itself to the issue as to whether the other items invoked by the petitioners are attracted.

. On behalf of the respondents their learned Counsel contended that the order should not be interfered with as admittedly the amendment is belated and no reasons have been given for condoning the delay. It is also sought to be pointed out that the suspension would invoke items of unfair labour practice which are falling within the jurisdiction of the Labour Court.

. Both parties have relied on judgments. In my opinion it is not necessary to advert to the same considering the order to be passed.

5. Considering the contention of the petitioners and invoking items both under Schedule I and IV, to record a finding that it is belated the learned Industrial Court had to record a finding that items invoked in the main complaint were not attracted. This prima facie finding is required in order to consider whether merely because a relief was sought against the suspension that by itself would decide the nature of the amendment. As no finding has been recorded as to whether the other items of the Schedules are applicable considering the averments in the complaint and the application for amendment, ends of justice would be met if the impugned order is set

aside and the matter is remanded back to the Industrial Court with a direction to dispose of the application for amendment within a period of three months from today.

8. Considering the above, Rule made absolute in terms of prayer clause (a). The matter is remanded back to the learned Industrial Court for hearing the matter afresh on the application for amendment and thereafter to dispose it off according to law. There shall be no order as to costs.

(F.I.REBELLO, J.)